

8-13-91

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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF LOS ANGELES

17 CHURCH OF SCIENTOLOGY OF)
CALIFORNIA, a California)
18 corporation,)

) CASE NO. C 420 153
)
) MEMORANDUM OF POINTS AND
) AUTHORITIES IN OPPOSITION
) TO MOTION OF UNITED STATES
) FOR ACCESS TO FIVE EXHIBITS

19 Plaintiff,)
20 vs.)

21 GERALD ARMSTRONG; DOE 1 through)
DOE 10, inclusive,)

22 Defendants.)

23 GERALD ARMSTRONG,)
24 Cross-Complainant,)

25 vs.)
26 CHURCH OF SCIENTOLOGY OF)
CALIFORNIA, a California)
27 corporation; L. RON HUBBARD;)
and DOES 1 through 100,)
inclusive,)

Date: July 26, 1991
Time: 8:30 a.m.
Dept: 56

28 Cross-Defendants.)

1 On April 30, 1985, the United States District Court for
2 the Central District of Los Angeles (Hupp, J.) issued an order
3 permitting the United States Internal Revenue Service to
4 examine and copy five exhibits^{1/} held in this case file by
5 the clerk of the Los Angeles Superior Court, subject to a
6 protective order against disclosure to other government
7 agencies or third parties. On February 9, 1987, the United
8 States Court of Appeals for the Ninth Circuit affirmed the
9 district court's order. 809 F.2d 1411 (9th Cir. 1987). The
10 Church did not petition the Supreme Court for review of the
11 Ninth Circuit's order.

12 Accordingly, the IRS was free to examine and copy the
13 documents from February 9, 1987 onward, a period of over four
14 years.^{2/}

15 In a motion just filed with the Los Angeles Superior Court
16 for access to the documents, the United States submits that the
17 IRS "neglected" to copy the exhibits after the Ninth Circuit's
18 decision "in the furor over the MCCS tapes."

19 There was no "furor." There was simply ongoing litigation.
20 If the five documents were in even the slightest manner
21 relevant to an ongoing concern of the IRS, the agency surely
22 would have obtained copies at the earliest possible time. The
23 IRS certainly has not been timid in seeking to copy documents

24 1. Exhibits 5-K, 5-L, 5-O, 5-P, and 6-O.

25 2. While the United States petitioned for review on the
26 protective order, which ultimately was affirmed by an equally
27 divided Supreme Court, the IRS could have obtained copies of
28 the documents at any time after the Ninth Circuit's decision,
subject to the protective order. Had the United States
prevailed on the protective order issue before the Supreme
Court, the protective order would have been lifted.

1 of Scientology churches, including many documents which the
2 federal courts have held it is not entitled to review.

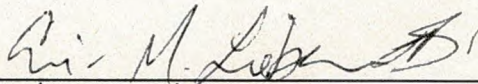
3 The fact that the IRS "neglected" to obtain the documents
4 reflects the fact that the IRS's "investigation" was terminated
5 while this case was first pending before the Ninth Circuit
6 Court of Appeals, a fact recently disclosed by the testimony of
7 the IRS agents in charge of that investigation. See
8 deposition testimony transcripts, attached as Exhibits A and
9 B hereto. The IRS has not had any reason or basis to obtain
10 the documents for at least four years.

11 One can only speculate why the government has now chosen
12 to obtain the documents. Perhaps the United States is
13 concerned that the appearance created by its failure to obtain
14 copies of the documents may undercut its position on the
15 Church's pending appeal on the MCCS tapes. Perhaps the United
16 States cannot resist the temptation to go "fishing" for Church
17 of Scientology documents, whether or not they are relevant or
18 necessary to a genuine IRS concern. Whatever the reason, the
19 last four years of inactivity compellingly demonstrates that
20 the IRS has no lawful need for the documents, and that
21 therefore the IRS' request for access to them ought to be
22 denied.

23 Dated: July 19, 1991

Respectfully submitted,

24 RABINOWITZ, BOUDIN, STANDARD,
KRINSKY & LIEBERMAN, P.C.

25 By: 
26 Eric M. Lieberman

27 Attorneys for Plaintiff and
28 Intervenor

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1 UNITED DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3
4

5 AUTHOR SERVICES, INC.,) CERTIFIED COPY
6)
7 PLAINTIFF,)
8 VS.) NO. 90 2187 RSWL
9 INTERNAL REVENUE SERVICE,) (SX)
10 DEFENDANT.) VOLUME 1
11 -----)
12
13
14

15 DEPOSITION OF
16 ALAN PHILIP LIPKIN
17 HOLLYWOOD, CALIFORNIA
18 JANUARY 30, 1991
19
20

21 ATKINSON-BAKER & ASSOCIATES, INC.
22 CERTIFIED SHORTHAND REPORTERS
23 1612 WEST OLIVE AVENUE, SUITE 203
24 BURBANK, CALIFORNIA 91506
25 (818) 566-8840

24 REPORTED BY: DENISE M. HOOPER, CSR NO. 7016

25 FILE NO.: 910051

1 MR. GIACOMETTI: OBJECTION; IRRELEVANT.

2 THE WITNESS: HOW DO I ANSWER A QUESTION
3 LIKE THAT?

4 BY MR. MOXON:

5 Q. YOU SAID IT WAS FOR STORAGE. HOW DO
6 YOU KNOW THAT IT WAS FOR STORAGE?

7 A. BECAUSE WE STORE IN OUR LOS ANGELES
8 STORAGE ROOM FILES PERTAINING TO INVESTIGATIONS
9 THAT ARE CLOSED; SIMPLE.

10 Q. SO IT WAS SENT TO YOU AFTER THE
11 INVESTIGATION WAS CLOSED?

12 A. OF COURSE.

13 Q. WHEN WAS THE INVESTIGATION CLOSED?

14 A. HERE WE GO.

15 MR. GIACOMETTI: ASKED AND ANSWERED. YOU
16 CAN TRY TO ANSWER THAT AGAIN.

17 BY MR. MOXON:

18 Q. YOU DON'T KNOW?

19 A. YOU TOLD ME NOVEMBER OF 1986. I'M
20 TAKING THAT AS THE -- AS THE MONTH AND YEAR.

21 Q. SO YOUR INVESTIGATION WAS FORMALLY
22 ENDED AND CLOSED IN NOVEMBER OF 1986?

23 A. MR. MOXON, DO YOU KNOW HOW MANY
24 TIMES I ANSWERED THAT QUESTION? YES.

25 Q. AFTER 1986 WAS THERE ANY PURPOSE

1 UNITED DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA

3 - - - CERTIFIED COPY

4
5 AUTHOR SERVICES, INC.,)

6 PLAINTIFF,)

7 VS.)

8 INTERNAL REVENUE SERVICE,)

9 DEFENDANT.)
10 -----)
11

NO. 90 2187 RSWL
(SX)
VOLUME 1

12
13
14
15 DEPOSITION OF
16 CONSTANTINE PHILIP XANTHOS
17 HOLLYWOOD, CALIFORNIA
18 JANUARY 28, 1991
19

20
21 ATKINSON-BAKER & ASSOCIATES, INC.
22 CERTIFIED SHORTHAND REPORTERS
23 1612 WEST OLIVE AVENUE, SUITE 203
24 BURBANK, CALIFORNIA 91506
25 (818) 566-8840

REPORTED BY: DENISE M. HOOPER, CSR NO. 7016

FILE NO.: 910496

1 DECISION IS ULTIMATELY MADE IN A DELIBERATIVE
2 MANNER AND I CAN'T REALLY DISCUSS WHAT THE BASIS
3 IS.

4 Q. FAIR ENOUGH.

5 HAVE YOU INFORMED ANYONE IN THE
6 I.R.S. THAT THE RECORDS SHOULD NOT BE RELEASED
7 BECAUSE OF AN ONGOING INVESTIGATION?

8 A. I HAVE NOT INFORMED ANYONE OF THAT.

9 Q. HAVE YOU INFORMED ANYONE IN THE
10 I.R.S. THAT THERE IS, IN FACT, AN ONGOING
11 INVESTIGATION?

12 A. BY CID?

13 Q. YES.

14 A. THERE IS NO ONGOING INVESTIGATION BY
15 CID.

16 Q. HAVE YOU INFORMED ANYONE IN THE
17 I.R.S. THAT RELEASES OF THE RECORDS COULD HARM A
18 FUTURE POTENTIAL INVESTIGATION BY CID?

19 A. I --

20 MR. GIACOMETTI: I'LL OBJECT; THAT'S
21 DELIBERATIVE PROCESS.

22 THE WITNESS: OKAY. I WON'T RESPOND TO
23 THAT, THEN.

24 BY MR. MOXON:

25 Q. AND IN YOUR COMMUNICATIONS WITH

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

On July 19, 1991, I caused to be served the foregoing document described as MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION OF UNITED STATES FOR ACCESS TO FIVE EXHIBITS on interested parties in this action as below:

Gerald Armstrong
P.O. Box 751
San Anselmo, CA 94960

LOURDES G. BAIRD **HAND SERVICE**
United States Attorney
MASON C. LEWIS
Assistant United States Attorney
Chief, Tax Division
EDWARD M. ROBBINS, JR.
Assistant United States Attorney
Federal Building, Room 2315
300 North Los Angeles Street
Los Angeles, CA 90012

If hand service is indicated, I caused the above-referenced paper to be served by hand, otherwise I caused such envelopes with postage thereon fully prepaid to be placed in the United States mail at Hollywood, California.

Executed on July 19, 1991, at Hollywood, California.

Helena K. Kobrin